

No. 12152

United States
Court of Appeals
for the Ninth Circuit

WALTER A. SHAYLOR and GLADYS
SHAYLOR,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

FILED
MAR 28 1943

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Amendment to Complaint.....	7
Amended Judgment	15
Answer	5
Appeal:	
Certificate of Clerk to Transcript of Record on	20
Notice of	17
Order Extending Time to Docket.....	19
Order for Consideration of Exhibits in Orig- inal Form on	98
Statement of Points on (DC).....	17
Statement of Points on (USCA).....	97
Certificate of Clerk to Transcript of Record on Appeal	20
Complaint	2
Amendment to	7
Findings of Fact and Conclusions of Law (Sub- mitted by Plaintiff and Rejected by Court)..	9
Findings of Fact and Conclusions of Law (Signed by the Court)	11

	PAGE
Judgment	13
Amended	15
Motion for New Trial	14
Names and Addresses of Attorneys.....	1
Notice of Appeal	17
Order Denying Motion for New Trial and Amended Judgment	15
Order Extending Time to Docket Appeal.....	19
Order for Consideration of Exhibits in Original Form	98
Statement of Points on Appeal (DC).....	17
Statement of Points on Appeal (USCA).....	97
Transcript of Proceedings	21
Witness for Defendant:	
Wagner, Dr. Carruth	
—direct	83
Witnesses for Plaintiffs:	
Finskley, Grace	
—direct	22
Shaylor, Catherine A.	
—direct	77
Shaylor, Gladys Catherine	
—direct	23
—recalled, direct	61
—cross	65
—redirect	70
—recalled, cross	80

Witnesses for Plaintiffs—(Continued)

Shaylor, Walter A.

—direct	72
—cross	74
—recalled, cross	92

Sullivan, Dr. John Robert

—direct	24, 34
—cross	42

NAMES AND ADDRESSES OF ATTORNEYS

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Attorney for Defendant and Appellee.

In the Southern Division of the United States
District Court, for the Northern District of
California

No. 26898-H

WALTER A. SHAYLOR, as Guardian Ad Litem
for GLADYS SHAYLOR,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, a sovereign
government, JAMES E. LUCAS, First Doe, Sec-
ond Doe, Third Doe, Fourth Doe, Fifth Doe,
Sixth Doe, Seventh Doe, Eighth Doe, Ninth
Doe, Tenth Doe, Eleventh Doe, Twelfth Doe,
Thirteenth Doe, Fourteenth Doe and Fifteenth
Doe,

Defendants.

PERSONAL INJURY SUIT UNDER
FEDERAL TORT CLAIMS ACT

To the Honorable Judges of the District Court of
the United States, in and for the Northern Dis-
trict of California:

I.

Plaintiff does not know the true names of de-
fendants sued as Does and prays leave to insert
herein said names when the same are ascertained
together with appropriate charging allegations.

II.

That Walter A. Shaylor is the father of Gladys
Shaylor, a minor, and that prior to the filing of the

complaint herein, Walter A. Shaylor by petition duly made was ordered and appointed [1*] guardian ad litem of said Gladys Shaylor.

III.

That on or about the 5th day of March, 1946, at or about the hour of 4:45 p.m. Gladys Shaylor was walking in the pedestrian walk in a westerly direction across Van Ness Avenue at the northerly corner where Van Ness Avenue and McAllister Street intersect, at said street and public thoroughfares in the City and County of San Francisco, State of California.

IV.

That at said time and place defendants negligently and carelessly drove a certain Dodge truck upon Gladys Shaylor.

V.

That said Dodge truck was the property of the United States Coast Guard, and was driven at all times herein mentioned by James E. Lucas, a member of the United States Coast Guard acting within the course and scope of his authority.

VI.

That by reason of the premises Gladys Shaylor received severe personal injuries, concussion of the brain and contusions and abrasions, fractured pelvis and lacerations about the entire body.

* Page numbering appearing at foot of page of original certified Transcript of Record.

VII.

That Gladys Shaylor has been generally damaged in the sum of \$25,000.

VIII.

That plaintiff brings suit under the Federal Tort Claims Act, Public Law 601, Title IV.

IX.

That by reason of the premises, plaintiff has been compelled to secure the services of physicians, surgeons, nurses and roentgenologists, and she has been damaged in this respect, therefore, to an extent presently undetermined, as said services are continuing, and plaintiff prays leave to insert the allegations of her monetary damages herein when determined.

X.

That by occupation Gladys Shaylor is a clerk, and by reason of the premises has been unable to work, to her damage in an amount unascertained as it is continuing.

Wherefore, plaintiff prays:

1. General damages in the amount of \$25,000;
2. Special damages as may hereinafter be alleged;
3. Cost of suit;
4. Any and other further relief which to the Court may seem meet and proper in the premises.

MELVIN M. BELL,

Attorney for Plaintiff.

(Duly Verified.)

[Endorsed]: Filed Feb. 18, 1947.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, United States of America, and answering plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

Defendant has no information or belief as to the allegations of paragraphs I and II and on such ground denies said allegations.

II.

Denies the allegations of paragraph III.

III.

Denies the allegations of paragraph IV.

IV.

Admits the allegations of paragraph V.

V.

Denies the allegations of paragraph VI.

VI.

Denies the allegations of paragraph VII.

VII.

Defendant is not required to answer paragraph VIII.

VIII.

Denies the allegations of paragraph IX.

IX.

Defendant has no information or belief as to the allegations of paragraph 10 and on such ground denies said allegations.

As for a second, separate and distinct answer

defendant alleges that the said Gladys Shaylor, a minor, was careless and negligent in and about the matters and things set forth in said complaint in that at the time and place of the event mentioned in said complaint said Gladys Shaylor, a minor, carelessly and negligently conducted herself without due or any care or caution for her own safety or precaution; that none of the injuries or damages claimed to have been sustained by said Gladys Shaylor, a minor, were caused by any acts of negligence on the part of the United States of America, or any of its agents, servants or representatives, but that the said negligence of the said Gladys Shaylor, a minor, was the sole and proximate cause of the injuries sustained by the said Gladys Shaylor, a minor.

WHEREFORE, defendant United States of America prays that plaintiffs take nothing by their complaint on file herein and that defendant have its costs of suit.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ C. ELMER COLLETT,
Assistant United States
Attorney.

[Endorsed]: Filed July 16, 1947.

[Title of District Court and Cause.]

AMENDMENT TO PARAGRAPHS II, VII AND IX OF COMPLAINT

As amendments to paragraphs II, VII and IX of the complaint on file herein, plaintiffs allege as follows:

II.

That plaintiff Gladys Shaylor was born July 31, 1926, and that said plaintiff is now over twenty-one years of age.

VII.

That Gladys Shaylor has been generally damaged in the sum of \$75,000.00.

IX.

That by reason of the premises, plaintiffs were compelled to secure the services of physicians, surgeons, roentgenologists, hospitals, ambulances and other appliances, more particularly described as follows:

Hospital, St. Mary's	\$ 211.85
Dr. John Robert Sullivan, medical services	600.50
Dr. John Robert Sullivan, surgical, Feb.	
26, 1948	250.00
Dr. August Spitalny, Pelvic Examinations	25.00
Dr. Frank W. Lusignan, medical.....	20.00
Ambulance to St. Mary's Hospital.....	7.00
Dress and suit cleaned.....	2.00
Stockings, torn	1.25
Twenty-eight days off work.....	187.38
Medicine to date.....	20.00

Total to date.....\$1,324.98

XI.

That plaintiff's attorneys are entitled to be allowed 20 per cent of any amount recovered, pursuant to section 944, Title 28, USCA.

Wherefore, plaintiffs pray:

1. General damages in the sum of \$75,000.00;
2. Special damages in the sum of \$1,324.98;
3. Costs of Suit and attorney fees as alleged hereinabove;
4. Any other further general relief which to the court may seem proper.

MELVIN M. BELLI,

/s/ WILLIAM E. GEARHART,
Attorneys for Plaintiffs.

(Duly Verified.)

[Endorsed]: Filed April 13, 1948.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Submitted by Plaintiff and Rejected by Court

The above entitled cause came on regularly for trial on the 12th day of April, 1948, before the Court sitting without a jury, Melvin M. Belli and William E. Gearhart, appearing as attorneys for the plaintiffs and Frank J. Hennessy and C. Elmer Collett, appearing as attorneys for the defendant and evidence both oral and documentary having been introduced and the cause submitted after two and one-half days of trial for decision, the Court now makes its findings of fact as follows:

FINDINGS OF FACT

1. That it is true that Walter A. Shaylor is the father of Gladys Shaylor; and that Gladys Shaylor was born July 31, 1926, and is now an adult;

2. That it is true that on March 5, 1946, at about the hour of 4:45 p.m., Gladys Shaylor was walking in the pedestrian walk in a westerly direction across Van Ness Avenue at the northerly corner where Van Ness Avenue and McAllister Street intersect and that said Van Ness Avenue is a public thoroughfare in the City and County of San Francisco, State of California;

3. That it is true that at said time and place defendant negligently and carelessly drove a certain Dodge truck into and upon Gladys Shaylor;

4. That it is true that said Dodge truck was the property of the United States Coast Guard and was driven at all times herein mentioned by James E. Lucasa, member of the United States Coast Guard acting within the course and scope of his authority;

5. That it is true that by reason of the premises Gladys Shaylor received severe personal injuries, concussion of the brain and contusions and abrasions, fractured pelvis and lacerations about the entire body; and that said injury to her head and pelvis is permanent;

6. That it is true that plaintiffs brought this action under the Federal Tort Claims Act, Public Law 601, Title IV;

7. That it is true that by reason of the premises, plaintiffs have secured the services of physicians, surgeons, roetgenologists, hospital and other medical attention; and have been specially damaged in the sum of \$1,324.98 by reason thereof;

8. That it is true that Gladys Shaylor has suffered general damages in the sum of \$35,000.00 by reason of the premises;

9. That it is not true that Gladys Shaylor was guilty of contributory negligence at said time and place.

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the Court finds:

That the plaintiffs are entitled to a judgment against the defendant United States of America, a

sovereign government, in the sum of \$36,324.98, lawful money of the United States of America, together with their costs of suit and that the fees of the attorneys for the plaintiff are hereby fixed at 20% of the amount of said judgment, to be deducted therefrom.

Judgment is hereby ordered to be entered accordingly.

Dated....., 1948.

.....

Judge, Said United States
District Court.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 12th day of April, 1948, before the Court sitting without a jury, Melvin M. Belli and William E. Gearhart, appearing as attorneys for the plaintiffs and Frank J. Hennessy and C. Elmer Collett, appearing as attorneys for the defendant and evidence, both oral and documentary, having been introduced and the cause submitted for decision, the Court now makes its findings of fact as follows:

FINDINGS OF FACT

1. That it is true that Walter A. Shaylor is the father of Gladys Shaylor; and that Gladys Shaylor was born July 31, 1926, and is now an adult;
2. That it is true that on March 5, 1946, at about

the hour of 4:45 p.m. Gladys Shaylor was walking in the pedestrian walk in a westerly direction across Van Ness Avenue at the northerly corner where Van Ness Avenue and McAllister Street intersect and that said Van Ness Avenue is a public thoroughfare in the City and County of San Francisco, State of California;

3. That it is true that at said time and place defendant negligently and carelessly drove a certain Dodge truck into and upon Galdys Shaylor;

4. That it is true that said Dodge truck was the property of the United States Coast Guard and was driven at all times herein mentioned by James E. Lucas, a member of the United States Coast Guard acting within the course and scope of his authority;

5. That it is true that by reason of the premises Gladys Shaylor received certain bodily injuries.

6. That it is true that plaintiffs brought this action under the Federal Tort Claims Act, Public Law 601, Title IV.

7. That it is true that by reason of the premises plaintiffs have secured certain medical and hospital attention, and there was also slight damage to Plaintiff, Gladys Shaylor's clothing, and plaintiffs have been specially damaged in the sum of \$460.25.

8. That it is true that Gladys Shaylor has suffered general damage in the sum of \$500.00 by reason of the premises.

9. That it is not true that Gladys Shaylor was guilty of contributory negligence at said time and place.

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the Court finds:

That the plaintiffs are entitled to a judgment against the defendant United States of America, a sovereign Government, in the sum of \$960.25, lawful money of the United States of America, together with their costs of suit, and that the fees of the attorneys for the plaintiffs are fixed at 20% of the amount of said judgment,

Judgment is ordered to be entered accordingly.
Dated May 7, 1948.

CHASE A. CLARK,

United States District Judge.

[Endorsed]: Filed May 7, 1948.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 26-898-H

WALTER A. SHAYLOR, as Guardian ad litem
of GLADYS SHAYLOR and GLADYS SHAY-
LOR,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This cause having heretofore been submitted to the Court upon the pleadings and the evidence adduced by the respective parties, and

The Court having thereafter made its findings of fact and stated its Conclusions of Law,

It Is Hereby Ordered and Adjudged, that the Plaintiffs have and recover of and from the defendant United States of America, the sum of \$960.25, lawful money of the United States of America, and that twenty per cent of said amount shall be allowed as attorneys fees.

Dated May 7, 1948.

CHASE A. CLARK,
United States District Judge.

[Endorsed]: Filed May 7, 1948.

Entered in Civil Docket May 7, 1948, Vol. 5,
Page 421.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

To the Honorable District Court of the United States and to Frank J. Hennessy, Attorney for the United States of America, above named defendant:

Please take notice that the plaintiffs above named intend to and do hereby move the said Court to modify its decision rendered in said action, in part, viz: as to damages, general and special, and to grant a new or further trial on part of the issues in said action, viz: as to the damages, general and special, for the following grounds, to wit:

1. Insufficiency of the evidence to justify the decision and that the decision is against law.

2. Error in law occurring at the trial and excepted to by said plaintiffs, the party making this application.

Said motion will be based upon this notice of motion, and the minutes, files, evidence and records in the above-entitled action and court.

Dated: May 12, 1948.

MELVIN M. BELLI,
/s/ WILLIAM E. GEARHART,
Attorneys for Plaintiffs.

(Acknowledgment of Service.)

[Endorsed]: Filed May 17, 1948.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL AND AMENDED JUDGMENT

The motion of plaintiffs for a new trial on part of the issues, namely: general and special damages having come on regularly to be heard and the matter having been argued and submitted on briefs only to the court for decision and the matter having been fully considered, the Court now finds, as it did formerly that no deduction should be made, nor was there any intention, at any time, on the part of the Court to make any deduction in the amount allowed as damages by reason of any accident insurance, or other insurance carried by the plaintiff Gladys Shaylor, at the time of the occurrence under consid-

eration herein; and, the Court further finds now, as it did at the time of the trial that there was no permanent injury to Gladys Shaylor by reason of the accident involved herein; and the Court further finds, however, at this time, that the amount allowed as general damages, because of certain bodily injuries received by the plaintiff Gladys Shaylor, should be increased in the amount of \$500.00, making the amount allowed as general damages \$1000.00.

It Is Ordered that the Plaintiffs do have and recover from defendant United States of America, the sum of \$1000.00, as general damages and the further sum of \$460.25, as special damages, making a total judgment of \$1460.25.

It Is Further Ordered said motion for new trial be and it is hereby denied.

Done in Open court this 7th day of September, 1948.

CHASE A. CLARK,

Judge of Said United States
District Court.

[Endorsed]: Filed Sept. 9, 1948. Entered in Civil Docket Sept. 9th, 1948.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Walter A. Shaylor and Gladys Shaylor, plaintiffs in the above-entitled action, hereby appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, viz (1) from that part only of that certain judgment entered and filed herein May 7, 1948, determining the amount of damages, general and special, to be awarded to said plaintiffs; and, (2) from that part only of that certain amended order or judgment entered and filed herein September 9, 1948, determining the amount of the damages, general and special, to be awarded to said plaintiffs.

Dated: October 25, 1948.

MELVIN M. BELLI,

/s/ WILLIAM E. GEARHART,

Attorneys for Said Plaintiffs and Appellants.

[Endorsed]: Filed Oct. 25, 1948.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL FOR APPELLANTS

1. The decision of the court as to the general damages is not supported by the evidence, is contrary to law and is not sustained by the evidence.

2. The decision of the court as to the special damages is contrary to law and not sustained by the evidence. The wrongdoer is not entitled to have the special damages for which he is liable reduced by proving that plaintiff has received compensation for

the loss from a collateral source, wholly independent of him. Under this rule, it is error for the trial court to admit evidence of accident insurance or any other insurance in behalf of the injured person to mitigate the damages.

3. In assessing damages, the court must consider the continued and recently accelerated depreciation of the purchasing value of the dollar.

4. A finding of the amount of damages by the court should be set aside where the amount recoverable was purely a matter of computation and where the computation was incorrect.

5. A judgment for the amount awarded cannot be sustained where the judgment was wrong on any reasonable hypothesis.

6. Where the findings of the court are based on undisputed evidence, any question as to the sufficiency of the evidence to sustain the findings is one of law and in consequence reviewable by the appellate court.

7. If the findings are manifestly erroneous, the judgment should be reversed.

8. Findings should be set aside where the trial court erroneously admitted evidence not competent or relevant or material to the issue.

9. Refusal to make findings as requested will be reviewed where the rejected findings are presented by the record on appeal.

10. Appellate court can order a retrial on a limited issue or issues, if that issue or issues can be separately tried without such confusion as would amount to a denial of a fair trial.

Respectfully submitted,

MELVIN M. BELLI,

/s/ W. E. GEARHART,

Attorneys for Plaintiffs and
Appellants.

[Endorsed]: Filed Nov. 10, 1948.

[Title of District Court and Cause.]

ORDER

Notice of appeal having been filed in the above-entitled cause on the 25th day of October, 1948, and it now appearing to the Court that it is necessary that appellant have additional time beyond the forty days provided for the docketing of their appeal;

It Is Therefore Ordered that the said time within which the appellants may docket their appeal in the above-entitled cause be extended an additional fifty days from and beyond the 2nd day of December, 1948.

Dated this 27th day of November, 1948.

CHASE A. CLARK,

United States District Judge.

[Endorsed]: Filed Nov. 29, 1948.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to . . . , inclusive, contain a full, true and correct transcript of the records and proceedings in the case of Walter A. Shaylor, as Guardian Ad Litem of Gladys Shaylor, Plaintiffs, vs. United States of America, a sovereign government, James E. Lucas, et al., Defendants, No. 26898 H, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$3.30 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 13th day of January, A.D. 1949.

[Seal]

C. W. CALBREATH,
Clerk.

In the District Court of the United States, Northern District of California, Southern Division

No. 26,898-H

WALTER A. SHAYLOR, et al.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

TRANSCRIPT

This matter was heard before the Honorable Chase A. Clark, United States District Judge, sitting with a jury, at San Francisco, California, on April 12, 1948.

Appearances: W. E. Gearhart, Esq., 240 Stockton St., San Francisco, California, Attorney for the Plaintiff. C. Elmer Collett, Esq., Assistant United States District Attorney, of San Francisco, California, Attorney for the Defendant.

The Court: Yes, I think the complaint may be amended.

Mr. Gearhart: I will stipulate that it is deemed denied. Paragraph two of the amendment states: "That plaintiff [3*] Gladys Shaylor was born July 31, 1926, and that said plaintiff is now over twenty-one years of age."

The amendment to paragraph seven "That Gladys Shaylor has been generally damaged in the sum of \$75,000.00 and paragraph nine I have

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

changed the amount of special damages to \$1,324.98.

The Court: The amendment may be filed.

* * *

GRACE FINSKLEY,

being called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Gearhart:

Q. What is your occupation?

A. Record librarian.

Q. Of what hospital?

A. St. Mary's Hospital.

Q. San Francisco? A. Yes, sir.

Q. The director authorized you to bring the hospital record of Gladys Shaylor?

A. Due to a subpoena served upon us.

Q. Do you have those records? [4]

A. Yes, sir.

Q. Do you know about the preparation of those records?

A. When a patient is admitted there is a complete record kept and after the patient is discharged the record comes to my custody.

Q. Those records are made in the regular course of business of the hospital? A. Yes, sir.

Q. At the time of the treatment of Miss Shaylor, between the dates named therein?

A. Yes, sir.

Q. You have the x-ray? A. Yes, sir.

Mr. Gearhart: I offer these records and x-ray in evidence.

Mr. Clerk: The record is marked as plaintiff's

(Testimony of Grace Finskley.)

exhibit 1 and the x-ray marked as plaintiff's exhibit 2.

Mr. Collett: May I inquire of the witness?

The Court: Yes, you may.

Q. (By Mr. Collett): What period of time does this cover?

A. The date of hospitalization of the first sheet is March 5 through March 21. This sheet I have typed I would like to have signed by the Clerk. [5]

* * *

GLADYS CATHERINE SHAYLOR,

called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Gearhart:

Q. You are one of the plaintiffs in this action?

A. Yes, sir.

Q. On March 5, 1946, were you injured in San Francisco?

A. Yes, sir. [9]

* * *

Q. How long had you been working at this place?

A. I started working at the Internal Revenue,——

Q. ——I mean at 100 McAllister. [10]

A. I had been working there about five months.

Q. When you left high school you started to work? .

A. Yes, I started to work right away after that.

* * *

A. I walked up McAllister to the corner of

(Testimony of Gladys C. Shaylor.)

Van Ness and I waited for the signal "go" to cross on the walk to the safety zone and board the car. I stepped off the curb when the signal said "go" and I don't remember anything after that.

Q. Where were you when you regained consciousness?

A. In the emergency hospital. [11]

* * * *

DR. JOHN ROBERT SULLIVAN,
being called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Gearhart:

Q. Where did you receive your medical education?

A. University of California and Creighton Medical School, Omaha.

Q. How long have you been admitted to practice? A. Since 1932 in California.

Q. You practiced the entire time in California?

A. Yes, sir.

Q. And the nature of that practice?

A. Standard internship in San Francisco Hospital, Residency in San Francisco General Hospital; the third year in San Francisco Hospital and subsequently in industrial practice with Doctor Cox, since 1939 my own surgical practice.

Q. Your practice consists of what? •

A. Surgery and traumatic surgery.

Q. You have been the family physician for Gladys Shaylor and Walter Shaylor, the father?

(Testimony of Dr. John Robert Sullivan.)

A. I have attended these people since I left the San Francisco County Hospital, where I first met them through associates out there.

Q. You have handled their medical problems since that time?

A. Yes, such as came in my field. [25]

Q. What period of time was that?

A. Since 1935, previous to that time I had seen them and their friends at the San Francisco hospital.

Q. Doctor, do you recall being called to the emergency hospital on March 5, 1946, to see Gladys Shaylor?

A. Yes, about six o'clock I was called.

Q. Did you go? A. Yes, sir.

Q. State what you found?

A. The patient was examined in bed, having been placed there following receipt at the hospital having arrived by ambulance. She was unconscious and bore evident signs of recent trauma, the most important factor was a large hematoma developing over the right side of the scalp and she showed signs of cerebral concussion; she was in moderate shock. There was a question of internal injury because of the condition of the bony pelvis. Arrangement was made and I had her transferred to St. Mary's Hospital.

Q. You treated her there? A. Yes, sir.

Q. Tell the Court your findings?

Mr. Collett: I object to this, there is no foundation laid as to sequence of the events, this is ambiguous.

(Testimony of Dr. John Robert Sullivan.)

The Court: I take it that the Doctor, in his words can tell the condition he found there. You may proceed. [26]

A. I see the information here in my writing, over my signature, under the classification of "working diagnosis," to this effect: Cerebral concussion, contusion scalp, contusion right shoulder, possible fractured pelvis, contusion bladder, multiple contusions and abrasions and strains of extremities. The patient was admitted under those conditions and treatment instituted by me that night. The treatment was extensive.

Q. Was she conscious or unconscious?

A. She was stuporous.

Q. What time was this?

A. Six forty-five or seven,—I would say 6:45 to 7:15 following her admission.

Q. How long were you there?

A. About three and a half hours at that time, working on the patient.

Q. Did she regain consciousness at that time?

A. She could be roused but it was not until the following morning that she was truly cognizant of her surroundings. She showed evident signs of cerebral irritation and on the basis of neurological examination a diagnosis of concussion was made. Her condition was such as to not warrant x-ray at that time although I ascertained that she had no cerebral depression. We were able to move her next morning and took x-rays. Because of the evident condition during the interval and the develop-

(Testimony of Dr. John Robert Sullivan.)

ing of the blood clot in the abdominal area the patient was watched [27] for injury to the bowel or genital urinary system. We ascertained that she had not had a rupture of the spleen or kidney through tests and I ascertained she had not ruptured her bladder. The trauma being to the lower front of the abdomen she evidence fracture without gross deformity of the pelvis because of ability to induce pain and increased relaxation of the pelvis to pressure, didn't show gross fracture; this was subsequently checked. The contusions and abrasions were in turn treated temporarily; such medication as indicated was given to control patient during first night. I had at my disposal copy of Department of Public Health record made in the normal manner and included in that file which is forwarded in such cases to the attending physician. At the Emergency Hospital the patient was examined by Doctor Penn and it is noted that the attending physician was notified and that Doctor Sullivan had sent the patient to St. Mary's Hospital. This report can be substantiated and was acceptable to me.

Q. This report of what, Doctor?

A. Report of Doctor Penn, of his findings in relation to his investigation of the patient when she was brought to the hospital. It is included in our hospital record.

Mr. Collett: Now, if the Court please, I shall object to this witness testifying to any other report.

The Court: Yes, just what you found, Doctor.

A. My findings at the Emergency Hospital and

(Testimony of Dr. John Robert Sullivan.)

on the night [28] of the injury have been mentioned before, specifically they are hematoma over the right skull, evident head injury, contusions and strains of the right shoulder, right upper extremity, trauma to the lower abdomen with large blood clot developed in the lower abdominal wall, fracture of the pelvis, contusions and abrasions on the lower extremities, particularly to the right ankle.

Q. Did you have x-rays taken? A. I did.

Mr. Collett: I object to the answer and ask that a portion be stricken. He testified it was his observation at the time he made the examination after the patient went to St. Mary's,—I object to it to the extent that he states now there was a fracture and before he stated there was no fracture.

A. The clinical evidence is such as to indicate a fracture.

Q. Did you have x-rays taken at the time?

A. The following day.

Q. Doctor, I show you exhibit 2 marked, will you examine this and state what it is?

A. X-ray; these are taken March 6, 1946, including an x-ray of the shoulder, girdle, skull and pelvis.

Q. I show you exhibit 3 marked for identification, look at this,—first I might say Mr. Collett and I agree that at the time the Government examined Plaintiff Gladys Shaylor they asked us for the x-ray from St. Mary's and certain [29] x-rays were taken to the Marine Hospital. These were delivered to our office and the record girl from the hospital didn't bring these. Now, will you examine

(Testimony of Dr. John Robert Sullivan.)

these and tell us when these were taken and where?

Mr. Collett: I object to any self-serving declaration by counsel as to what transpired.

The Court: It seems to me it is just a question of identification, you may proceed.

A. The latter group are those under date March 20, 1946, and September 27, 1947, taken at St. Mary's Hospital at my direction of this patient, Gladys Shaylor.

Q. What about this?

A. That is March 27, 1946.

Q. At St. Mary's Hospital?

A. Yes, sir. There are two views of the pelvic structure, and the third view which was a specific detailed picture of the bladder.

Mr. Gearhart: I offer this in evidence as exhibit 3.

The Court: It may be admitted.

Q. Doctor, I show you envelope of x-rays will you tell the Court where those were taken?

A. This patient was referred to Doctor August Spitalny by me. These pictures were taken at his direction.

Q. What date? [30]

A. These two were taken March 20 and should be with this single film dated March 20. They were taken at St. Mary's.

Mr. Gearhart: May we offer this also as exhibit 3?

Mr. Collett—I will object—

The Court: —Keep these in order now, what are those, Doctor?

(Testimony of Dr. John Robert Sullivan.)

A. These are the films that the Government had.
The Court: They are taken at the time mentioned and are of the patient?

A. Yes, sir.

The Court: Proceed with your examination.

Q. What time were these taken?

A. March 20, at St. Mary's. That is March 20, 1946.

Q. And the rest in this envelope?

A. These were films taken by Doctor Levitian at the request of Doctor Spitalny and was done for the study of the urinary system.

Q. How many are there?

A. Six sets.

Q. And when were these taken?

A. June 6, 1946.

Q. At your direction?

Mr. Collett: He told us that.

Mr. Gearhart: We offer these in evidence. [31]

The Court: Have you seen the exhibit?

Mr. Collett: Yes, I have seen them.

The Court: And they are of this patient, are they, Doctor?

A. Yes, sir, they are.

The Court: They may be admitted. I think this is exhibit numbered 6.

Q. Showing you all three of these, Doctor, which x-ray show what you have testified to, or have you testified here as to a fracture?

A. Well, the sequence of events in the course of investigations was to determine if the patient

(Testimony of Dr. John Robert Sullivan.)

had a fractured skull. The film under date of March 26 reveals the cranial suture markings but no evident fracture or depression. This (indicating) is a lateral projection—this is a similar lateral projection to get the depth that cannot be demonstrated on this machine. This (indicating) is an anterior-posterior projection and shows no evident fracture of the skull, though we were able to see some increase density due to effusion of blood into the scalp which would explain the hematoma. This (indicating) is the left lateral as compared to the right lateral, it is negative as to fracture. This is another anterior-posterior projection and it is negative for fracture. This (indicating) is a picture of the right shoulder and reveals no fracture. The [32] humerus is indicated here (indicating) and there was some swelling and contusions. This is a complement picture of the same shoulder. Now, this is an x-ray taken of the bony pelvis, used for stereoscopic examination; that reveals some widening in this area of the pelvis. The maximum pain on examination was at the level of the symphysis here (indicating). There is an irregularity to the plane of the true pelvis here and suggests that the patient had a tearing or wrenching force resulting in the pulling apart of the bone.

Q. Doctor, what is the natural condition?

A. This is not a movable joint. The joint is formed by the close proximation of two bones, held firmly together by tough ligament structure. The separation here is approximately 4 mm.

(Testimony of Dr. John Robert Sullivan.)

whereas it should be less than 1 mm. There is no other injury indicated to the true pelvis, but it did confirm the injury to the symphysis pubis.

Q. And what is the effect, or how does that affect the motion of the individual? In her natural motion Doctor, how does that affect her?

A. At this moment there was an instability of the pelvis itself through which all the weight of the body is transmitted. There was a disruption of this unit as compared to this (indicating). That would account for the pain radiating down the leg and account for the pelvis seeming to move. This is a picture taken on September,—I don't [33] see the date,—September 1947, to ascertain what change had occurred in the bony apposition; the patient wearing a garment for the continued stability of the pelvis, with some small loss here, that is the change noted here at this point (indicating). This is a larger film and shows the disproportion of the plane or curve here which indicates a disruption of the symphysis pubis. These were taken September 27, 1947. Included in this group was a single film which was taken while she was hospitalized; this is one of a series, the others being included in this other envelope. This was taken before an opaque substance was introduced into the bladder. These two films (indicating) were taken at the same time and show the ordinary bladder extended and no evident leakage out into the surrounding tissue which is sufficient indication that the bladder gave no signs of rupture. This pro-

(Testimony of Dr. John Robert Sullivan.)

jection is a lateral view where we are able to see the posterior aspect of the bladder and again there is no evident leakage of the bladder itself. This (indicating) is a set of films taken at the request of Doctor Spitalny for genito-urinary investigation. They are pictures of the kidney function, the kidney to the bladder function. This was taken following the introduction of intravenous dye, shows the characteristics of the urinary system in draining from the kidney through the ureter into the bladder; this (indicating) is an outline of the kidney as you see. [34] The kidneys are diagnosed as working normally. The dye entered the bladder without interruption. The full series were a repetition of this. This is at a later period of time showing more of the dye in the bladder and this is a similar picture to the one shown before and taken five minutes later. This is a flat plate and this is another film showing more dye in the bladder. That is a summation of the x-rays.

Mr. Collett: Which of the x-rays were turned over to the Marine Hospital?

Mr. Gerhart: Exhibit 4.

A. In 1946 the films were put in the file and I gave an order to have all the films given to the Government. The original films I think were seen by the Government representatives at St. Mary's in 1946. The only difference here is that this single film should have been in with the others.

Mr. Collett: Those are the ones given to the Government?

(Testimony of Dr. John Robert Sullivan.)

A. Yes, as near as I can ascertain.

The Court: We will recess at this time until 2 this afternoon.

2 o'clock p. m., April 12, 1948

DIRECT EXAMINATION (continued)

Q. Doctor as I remember you said you had been the physician [35] for the plaintiff for a number of years? A. Yes, sir.

Q. Will you tell the Court of any operations or treatment prior to this date, October 5, 1946, by you, Doctor?

A. You mean March 5, 1946.

Q. Yes, March 5th, tell of any operations or treatment?

A. May I have recourse to my notes?

The Court: Notes made at the time of the treatment or operations, yes, you may refer to them simply to refresh your memory.

A. About, let's see, primary form of therapy was directed to this individual on August 6, 1943, at which time this patient was seventeen years of age——

Q. —For what was that, Doctor?

A. As I say, at which time she was seventeen years of age, she was brought to my office and the history and findings were those of recurrent appendicitis; the patient was noted to have mild pyelitis in association with her symptoms of appendicitis. As of August 1943 following adequate observation a later diagnosis of terribly inflamed

(Testimony of Dr. John Robert Sullivan.)

appendix; medical management having been instituted the patient continued to present symptoms of appendicitis and she was brought to me on August 23, 1946, and at that time a chronic appendix was encountered and removed and the patient had a normal convalescence to discharge. Following that, in about a month, it was in October 1943 the patient again was [36] brought to me by her mother, at which time she was having some gastric upset diagnosed as gall bladder trouble; adequate tests confirmed this. The patient was placed on a diet and medical management for gall bladder which we have continued to date. In January 1944 because of evident obesity and menstrual difficulty; pain following menstruation, a basal metabolism was done to find her thyroid condition; this was found deficient and she was placed on therapy. This reduced the congestion of her female organs. The medication was supplemented by instruction to the mother to carry on the treatment at home. There was a minor accident in June 1945, a fall to her buttocks, x-ray taken were negative to fracture or pathological change, this required treatment and she was discharged on June 18, 1945. In the interim from June, 1945, until my entrance into the case for treatment because of this injury, the patient was only on the gall bladder management and thyroid treatment as was discussed with her mother.

Q. Doctor, in view of your education, training and experience and the history of this case, could

(Testimony of Dr. John Robert Sullivan.)

you express an opinion as to whether there is any relationship between the gall bladder trouble and the injury she sustained and suffered on March 5, 1946?

A. There has been no trauma to the area of the gall bladder. The gall bladder is not involved in this condition, as such. [37]

Q. There is no logical relationship between this gall bladder trouble and the injury of March 5, 1946?

A. No. She had the gall bladder symptomology antedating her injury.

Q. Doctor, tell the Court whether or not she has had any surgical attention by you since March 5, 1946, or in the first part of 1948?

A. Yes, this patient was brought to me.

Q. Tell the Court the history of that?

A. On February 2, 1948, the patient reported to my office; she complained of acute abdominal pains,—originally on January 27, 1948,—that occasioned careful examination upon which it was found that she had pain of considerable intensity in the left lower quadrant of her abdomen; a tentative diagnosis of Meckles Diverticulum; a very careful examination and x-ray being made to confirm the symptoms complained of. The patient sustained increasing distress and was placed in St. Mary's hospital February 9 because of some bowel obstruction, or bowel obstructive symptoms. She was operated and obstruction found in her small bowel approximately 19 or 20 inches from the terminal end of the small bowel. The patient

(Testimony of Dr. John Robert Sullivan.)

made an uneventful recovery at that time and I feel has recovered from the effects of the surgery. However several things were noted during that procedure.

We noted replacement by scar tissue to a great extent of the muscular tissue and facia which I attributed to the [38] marked bleeding of the abdominal wall sustained in March 1946.

Q. Sustained March 5, 1946?

A. Yes, sir, and found on March 5, 1946.

Q. Doctor, in your opinion would that require an operation to correct that situation?

A. Yes, sir.

Q. Doctor, what would you say would be a reasonable charge for such an operation?

A. That operation which was done and the diagnosis which I classed being due to an obstruction of the small bowel the ordinary charge would be \$250.00 for that phase of it.

Q. Now, Doctor, from your treatment of Gladys Shaylor can you state from your knowledge and experience as a medical man, as a practicing physician whether or not you found any present kidney or bladder symptoms?

A. The patient at the present time no longer demonstrates the original defects. The bladder function is restored to normal in so far as capacity is concerned. The patient does express pain in relation to her bladder at the present time but it is not so much pain of the bladder as it is the structure overlying the bladder and inner abdom-

(Testimony of Dr. John Robert Sullivan.)

inal wall and symphysis pubis wherein she sustained her bony injury.

Q. Doctor, did you prescribe any belt for the relief of this pain? [39]

A. The patient before being discharged in 1946 was fitted for a supportive garment to be worn constantly as a substitute for a cast to control her pelvic injury.

Q. Before she left the hospital?

A. Yes, sir.

Q. Can you state whether or not she was confined to bed after leaving the hospital?

A. The patient was transferred out of the hospital on account of the bed load and sent home and not permitted to come to my office for approximately two weeks for the institution of physiotherapy.

Q. Considering your education, experience and the history of this case could you express an opinion as to whether there is a permanent injury to the plaintiff Gladys Shaylor with reference to her pelvis, her symphysis pubis?

A. From the separation which I have explained as shown in the films, this has given rise to some instability in the pelvic ring which accounts for the pain, on any jarring motion, through the lower extremities, any turn of the body will produce pain in the neighborhood of the symphysis pubis, in what should be a solid joint.

Q. Could you state that would be permanent?

A. Because of the lapse of time since the date of the injury and the improvement noted, I would

(Testimony of Dr. John Robert Sullivan.)

say the condition today in relation to the pelvis is permanent, that is, as to the symphysis pubis.

Q. Now, Doctor, before I show you this,—let me ask you [40] if in your opinion, taking into consideration your training, experience and the history of this case, can you express an opinion with reference to the head injury, the concussion which you described, whether she will have headaches permanently?

Mr. Collett: We object to that question, it does not state all the elements if he is asking a hypothetical question—

The Court: —I don't think this is in the form of a hypothetical question, and if the Doctor understands the question he may answer.

A. I think I can answer.

The Court: Very well.

A. The patient on primary examination presented hematoma over the right side of scalp, right parietal region. It was evident that the patient had been struck on the scalp to produce the hematoma there, and there were certain neurological findings, irrationability, indicating a degree of cerebral concussion, at no time did she demonstrate any definite localizing lesion wherein one could say the motor area was affected, but she did have, over a period, progressively decreasing headaches in the right temple area. Industrially we anticipate that following an unconscious period due to head injuries, then the patient may or may not have a visible degree of post-traumatic headache usually localized in the same area as the

(Testimony of Dr. John Robert Sullivan.)

trauma for an indefinite period. This patient's frequency of headaches is gradually decreasing, which is a good sign. [41]

Mr. Collett: I ask that the whole answer be stricken, there is no foundation laid as to what her symptoms were, no foundation as to her treatment, so far as the treatment of the Doctor is concerned there is nothing as yet to disclose what that treatment was?

The Court: I thought he gave us the condition of her head at the time of the accident, I may not have understood it.

A. Yes, in the hospital record I stated a cerebral concussion and hematoma of the scalp as one of the findings and diagnosis.

The Court: The answer may stand.

Q. Now, Doctor, I show you a statement on your stationery and I would like at this time to have it marked for identification.

(Whereupon document was marked by Clerk.)

Q. Now I wish you would look at plaintiff's exhibit 7 marked for identification, examine it and tell the Court whether that represents reasonable charges for your services covering the period from March 5, 1946, to the present time.

A. I think this is a reasonable charge and this is based on the Industrial Accident Commission fee schedule.

Mr. Gearhart: I offer it in evidence.

Mr. Collet: I object to that. Is this a schedule of the commission fees or it is the Doctor's charges.

(Testimony of Dr. John Robert Sullivan.)

Q. Doctor, did you prepare that?

A. This is prepared in my office by my secretary, it is for emergency treatment, treatment for shock at the emergency hospital, treatment at St. Mary's hospital care and attention 3/5/46 to and including 3/22/46. Orthopedic management; fractured pelvis, right shoulder injury, right leg and right leg injury; genito-urinary treatment and investigation neuro-surgical management, and hospital calls. There are three items in 1946, 1947 and one in 1948 arising directly out of the injury sustained in addition to charges for certain medical transcripts requested of me in this case.

Mr. Gearhart: I offer that in evidence.

Mr. Collett: I object to it on the ground that it is not established as to when these charges were prepared and whether or not they have been paid by the plaintiff.

The Court: Is that the charge you made to her?

A. Yes, sir, these charges (indicating).

The Court: That is what she owes you?

A. Yes, sir, and as noted here, medical reports requested and testimony in Court.

The Court: Exhibit 7 may be admitted.

Mr. Gearhart: I will read this at this time.

"Miss Gladys Shaylor, 119 Hampshire St., San Francisco, California.

"For professional services rendered, and this is dated [43] April 12, 1948.

"3/5/46 Emergency Hospital. Examination, emergency treatment, treatment for shock. 3/5/46 St. Mary's hospital care and attention 3/5/46 to

(Testimony of Dr. John Robert Sullivan.)

and including 3/22/46. Orthopedic management; fractured pelvis, right shoulder injury, right leg and right ankle injury. Genito-urinary treatment and investigation; neuro-surgical management. Hospital calls, \$200.00.

“Medical management 2/23/46 to and including 12/31/46. Examination, physiotherapy, consultations, \$110.50.

“Medical services 1/1/47 to and including 12/31/47. Examinations, treatments, medical reports submitted in this case. \$140.00.

“Medical services 1/1/49 to and including 4/12/48. Examinations, consultations \$50.00.

“Court testimony 4/12/48 \$100.00,” making a total of \$600.50.

Mr. Gearhart: I would like to have this marked as the next exhibit.

(Whereupon exhibit 8 was marked by Clerk.)

Cross Examination

By Mr. Collett.

Q. This exhibit 2 is an x-ray taken 3/6/46, as I understand it, Doctor, now I am referring to plaintiff's exhibit 2 the x-ray of the abdominal area taken March 6, these were taken for the purpose of stereoscopic examinations?

A. That is right.

Q. Now, these (indicating) are the same picture? A. The same picture.

Q. Exhibit 2-A would you again point out the area which you testified concerning on direct examination involving the symphysis pubis?

(Testimony of Dr. John Robert Sullivan.)

A. For clarity I think we should have a better description of the pelvic structure so one will know where it occurs. The entire structure is known as the pelvic bony ring the sacrum is at the posterior of the spine and joins there bilaterally at a joint known as the sacro-iliac. This portion (indicating) is known as the ilium. The iliac cross this portion (indicating) comes forward and there is posteriorly the hip joint; there are two prongs here known as the inferior and superior rami [45] which again join in the bony structure of the pelvis, this is known as the symphysis pubis (indicating). Any separation in these joints revert to the posterior or the sacro-iliac or the entire function as the symphysis pubis is more or less protective of distortion in the pelvic bony circle. It frequently happens because of injury to the pelvis that either or both the rami are injured. This did not occur here. Whatever force was applied opened up this joint, and it is considered a fractured pelvis because there is a break in the bony continuity of the structure.

Q. The only area of involvement so far as the hip arrangement is concerned is the symphysis pubis as it is called.

A. The symphysis itself does not enter into the hip structure. The only disruption in the bony pelvis is the break.

Q. What is the nature of the tissue that covers that separation?

A. Densely thickened fibro-cartilage structure,

(Testimony of Dr. John Robert Sullivan.)

similar to the ones that hold your skull together.

Q. Where is this with reference to the buttocks, Doctor? A. It is the exact opposite.

Q. The buttocks is posterior and the symphysis pubis is anterior? A. That is correct.

Q. What involvement is this area subject to?

A. What phase of trauma can be delivered, you mean?

Q. I will withdraw that. What diseases or influences is that area subject to?

A. Well, years ago,—this is historical, before the advent [46] of improved obstetrics the presenting of the head or fetus, could not enter the true pelvis, necessitating the old time obstetrician's opening the abdominal wall with considerable manipulation of this area to permit the passing of the fetal head and was considered a problem. So far as disease is concerned that bony structure can be involved in any bone disease, that is, any disease that involves any other bony structure.

Q. Doctor, you mentioned obstetrics, in the process of childbirth is there any separation that occurs in that area?

A. There is a strain, not only on the symphysis pubis but on the sacro-iliac joint in the conformation and descent of the fetal head through the true pelvic outlet.

Q. Is that considerable of a strain on that area, that is, at the time of the delivery of the child?

A. No, for the simple reason that since the advent of caesarean practice the doctor does not

(Testimony of Dr. John Robert Sullivan.)

conjecture as to the size of the fetus compared to this bony portion——

Q. ——Doctor, let us ask you this, during the course of childbirth in the average female is that area not subject to a good deal of strain?

A. That is most difficult to answer because of conditions; the attempt today is to prevent any strain. The pelvis does not give. It can be stretched if forceps are placed within the vaginal tunnel and around the descending fetal head then by external leverage some strain is placed but the amount of strain necessary to produce that sort of thing is likely to produce death to the fetal head.

Q. This roughness here (indicating) was caused by the [47] accident of March 5, 1946, you say?

A. No, I said that the opening, the separation, and the indications of this picture taken on March 6, shows a disproportion in the symphysis over normal. One undoubtedly resulting from a vulsion type of fracture in that area.

Q. Define fracture in the sense you are using it?

A. Vulsion type is one wherein the ligmentous structure attaching two bones is disrupted by force. This type is somewhat irregular but we can refer to the shoulder point where the acromi-clavicular joint is disrupted by such type of fracture. We can also point to such type where the muscles are torn directly off the bone such as about the shoulder girdle and later bony spicules can be seen where they have been torn off the bone.

Q. Doctor, by vulsion type of fracture I am trying to understand you. It is not necessarily

(Testimony of Dr. John Robert Sullivan.)

a fracture of the bone. It may be a torn ligament.

A. There is vultion of the ligamentous structure carrying with it some of the critical substance of the bone?

Q. And this is that type?

A. I consider it. On the increase of the mobility of the symphysis on manipulation at that time she had some hemorrhage in the tissue.

Q. Doctor, at the time of the accident and the examination if it had been the condition there would be necessarily a reaction to your endeavor to establish mobility?

A. The point is that testing for fracture in and about the [48] pelvis, pressure is never applied to this area. Interpretation of any fracture involving the pelvic ring is done by transmission and if there is a break in the continuity the side so involved will cave.

Q. From what type of fracture would that come about?

A. Fracture in here and through here (indicating) or involving the entire ileo.

Q. You state that the hip would move? It would move on the application of force, which would be pressure?

A. This would not move to any extent; but movement of some distance, the pelvis is a solid structure. Where there is pressure applied and a break in the continuity of the bony ring there is a loss of resistance to the pressure applied indicating some break somewhere, a break in the stability of the bony pelvic ring. This was evi-

(Testimony of Dr. John Robert Sullivan.)

dent at this time. I cannot say whether that transmission or the transmission of shock resulted in this shifting each time. You see we test over the pelvis to determine whether there is any clinical evidence of fracture involving the pelvis.

Q. But, Doctor, in that picture what would you point out as to the conclusion you express?

A. The separation of 4 mm. and some drop of the right side of the superior border as compared with the left side here (indicating).

Q. Could this have been caused at any other time or by any other cause than this accident?

A. I do not feel that it could. The x-ray of her bony [49] structure interpreted by competent men in connection with the fall which I previously discussed was entirely negative of any disturbance in the pelvis. These were taken by Doctor Williams of this city.

Q. She suffered an injury to the buttocks?

A. That is correct.

Q. And your knowledge upon that is as to the external appearance and as to what the x-ray showed at that time?

A. Yes, that injury occurred previous to this injury of March 5, 1946; as I previously gave testimony, at that time the patient had a moderate contusion of her gluteal fold or buttocks and required treatment for 12 or 13 days for the bump on the buttocks. X-ray was taken and when interpreted was negative of any pelvic involvement, sacro-iliac or lower spine.

Q. Did you observe that x-ray in so far as

(Testimony of Dr. John Robert Sullivan.)

that area is concerned; that symphysis pubis?

A. Yes, there appeared to be no deformity of her symphysis pubis at that time.

Q. What other causes may accomplish similar pictures as we have here, Doctor, could horseback riding; would that show a similar picture as the one you have here?

A. No, I feel that would not be productive of separation unless there was trauma of more severity than could be caused by horseback riding. If the horseman was thrown it could possibly produce such a picture.

Q. Do you know what the cause of the buttocks injury was? [50]

A. Slipped on a step and hit the leader of the step with her buttocks?

A. To what extent was the injury?

A. Black and blue mark. She was under observation for two weeks. She had diathermy to the soft tissue.

Q. The elements that you state that indicate a fracture are in this area; the roughening of the edge?

A. Directly over the right side here (indicating) the interpretation placed on the x-ray, the right side here.

Q. Then as far as the picture is concerned it is the moderate increase or slight increase in width shown in this area?

A. Through here and particularly the depression or rather the disruption not in conformity with the normal circular contour. This demon-

(Testimony of Dr. John Robert Sullivan.)

strates in Doctor Capp's film taken in 1947 wherein he interpreted it as being a little wider than the first films. These films are in the record. This was considered a minimal degree of separation of the symphysis pubis on the occasion of this examination?

Q. Doctor, have you had many cases such as this?

A. Yes, I have had cases where this was badly disrupted, where this (indicating) was driven up into the bladder. In this case there was a minimum degree of disruption. You see this pelvis is designed to protect the structures within it. We are concerned mostly with what happened to the structure within the pelvic ring. When anything [51] happens to the pelvic ring we investigate as to the soft tissues damaged.

Q. Now, Doctor, plaintiff's exhibit 3-A which is an x-ray of the same area as plaintiff's exhibit 2-A.

A. Yes.

Q. That was taken I believe on September 27, 1947?

A. Yes.

Q. This particular x-ray we now have, the right-hand side to our left is that correct?

A. As we look at it now.

Q. Do you see any difference in the x-ray and plaintiff's exhibit 2-a. That is, do you see any difference in 3-a and 2-a?

A. It is difficult to interpret in this respect, of course one must rotate to appreciate this, that is to make this film constant with this film in the view box. It should be turned around.

(Testimony of Dr. John Robert Sullivan.)

Q. Very well, turn it around.

A. There has been a gradual replacement and thickening of the bone in this level of the symphysis. You will notice the persistence of the slight drop as to the level at the point of the superior margin of the symphysis, indicating that the right side of the pelvis is down. It is only a fraction of an inch but it is nevertheless present, that and the width there are the only means shown of explaining the persistent tenderness when one [52] presses over the symphysis pubis.

The Court: Does it show improvement?

A. There has been no further marked separation and it has not come together. The healing has occurred.

The Court: Would that healing increase as time goes on?

A. It may improve if the patient was an athletic individual of normal weight and in the proper age group, but this patient being moderately obese, her weight would tend to aggravate the separation. The official interpretation of these films is somewhere in this record. I think that the last measurement of it was 4 mm. separation in the symphysis at the time these films were taken. So far as the patient is concerned this healing has taken place. There is no bony union but a dense ligamentous structure.

The Court: Is there any improvement shown between the two pictures?

A. I feel there has been in this respect. Where the line here in the film of March 6, is a little fuzzy the line here is more solid. I would say

(Testimony of Dr. John Robert Sullivan.)

there has been a healing of the ligamentous structure that are attached there.

Q. This particular area is very strongly constructed in physiological composition of the body?

A. Yes, and it is a point of extreme stress. [53]

Q. If there was a tear in the tissue in that particular area wouldn't it show on the x-ray?

A. Density of tissue is not constant with the bone. It will deflect the x-ray to an extent, as does bone.

Q. You are going to show the separation in other pictures of this type?

A. It can be, that is correct.

Q. Were there any side views taken?

A. No. A stereoscopic inspection gives the expert the density that is necessary.

Q. In Doctor Capps' report it states as follows; and this is taken from plaintiff's exhibit 1, the report from the St. Mary's films, or the St. Mary's x-ray report:

"Films of the pelvis show very minimal separation of the pubis with a slight irregularity at the upper border of the right side of the symphysis. This may be simply a torn ligament to produce this appearance, for there is no separation at the sacro-iliac joints or any fracture of either hip joint or of the sacrum."

A. That is what I have been implying that is a torn ligamentous structure.

Q. If there had been a fracture wouldn't Doctor Capps have reported it?

A. He gave an adequate description as to the condition.

(Testimony of Dr. John Robert Sullivan.)

Q. I am trying, Doctor, to have you explain what you have termed a fracture? [54]

A. A separation of the pubis is a break in the continuity of the bony pelvis.

Q. A break in the continuity but is it a fracture?

A. To all intents and purposes, yes.

Q. To all intents and purposes.

A. There has been an interruption in the normal continuity of the bony structure by the separation of the two bones, a fracture of the continuity of the bony ring has occurred.

Q. The continuity of the bony ring is interrupted, you say, and there is a separation in the area, now, under any of these circumstances, Doctor, is it the ordinary thing for you to call a strained ligament a fracture?

A. I see what you are implying. If the strained ligament has to do with a ligamentous structure that holds together solid bone or what is considered a solid joint, one without motion it is considered a fracture. For example sutures in the skull are held together by similar structure; if a man receives a blow, or some force applied to the skull and it depresses a whole section of the bone, there may not have been a fracture of any bone, but the man is considered to have a fractured skull.

Q. You recommended and the plaintiff has worn, to some extent a truss or brace?

A. A pelvic support which produces constant pressure to stabilize this area of the pelvis. [55]

(Testimony of Dr. John Robert Sullivan.)

Q. What is ordinarily the history of this type of injury as far as healing is concerned?

A. Fractures of the symphysis, separation and tears frequently occur as supplement to other major fractures of the pelvis, fractures through the ilia with tortuous action tear this structure apart and produce an abnormal deformity. Lack of stability here and elsewhere would permit the hip motion to throw this segment of bone (indicating) up into the soft tissue of the pelvis. In fractures of this type when the thrust is made upward there is a tendency for this (indicating) to rise up in this motion because of the instability of this union.

The Court: Doctor, in such fractures as you have here what is the history as to recovery?

A. Statistically the wearing of a supportive type of garment, with a separation and minor fracture of this part of the symphysis makes it reasonably safe to permit ambulation within a period of four weeks. Such treatment as is required pending restoration of the normal structure is given if you can fix the pelvis, stabilize it through a garment; the weight is taken from here (indicating) with some discomfort.

Q. The patient Gladys Shaylor, when was she last examined by you for a determination of her present condition so far as this phase of the injury is concerned?

A. Interpretation made as to the history and effects of [56] the injuries in December. She has been examined this year also, not with addi-

(Testimony of Dr. John Robert Sullivan.)

tional x-ray but she has been examined. I feel that it is permanent in that respect.

Q. You state in your opinion this has permanently affected the plaintiff?

A. Yes, sir. One thing at this point: May I ask that Doctor Capps' report and interpretation of this film which is that of September I believe and I think we have it——

Mr. Collett: I think the question has been answered.

The Court: Yes, I think the Doctor has answered and no further explanation is necessary. We will recess at this time for fifteen minutes.

April 12, 1948, 3:15 p. m.

Q. Doctor, what is urachus?

A. Congenitally speaking it is one of the integral parts of the placenta and umbilical cord; in the fetal development it has to do with the entire congenital development and preserves itself during and after birth. It is a cord between the bladder and the navel, terminating at the umbilicus or navel.

Q. Have you observed any discharge at the navel in the plaintiff in this case?

A. Yes, sir, she did complain of discharge at the time of the injury but I attached no particular significance to [57] it feeling it was part of the muscle or fascia trauma of the inner abdominal wall.

Q. When did you first have knowledge of some difficulty in that area, that is, on this individual?

(Testimony of Dr. John Robert Sullivan.)

A. I don't recall the exact date but sometime after the patient left the hospital she complained of some discharge arising at her navel or umbilicus. I attributed it to a leakage from the urachus.

Q. Doctor, the gall bladder trouble for which you treated her. What were the symptoms observed by you at the time you treated her?

A. That was in 1943; the patient reported to the office with her mother. She complained of bowel discomfort and passage of acholic stools,—those are devoid of bile,—on examination of the abdomen,—the gall bladder lies in the right upper quadrant. That was distinct and quite tender and a diagnosis of mild cholecystitis was made. The patient was placed on a diet and given medication to bring about a normal function of the gall bladder.

Q. What were the difficulties of her menstrual period?

A. It wasn't right at that time but it was a short time after because of her evident upset plus the fact of considerable menstrual discomfort, she was brought to the office by her mother. I attributed the condition to an unbalanced thyroid gland and in turn the increase [58] in size of her ovaries resulting in pain and increasing at the termination of the menstrual flow. She was placed on thyroid management which resulted in diminution of the menstrual pain.

Q. Does she still complain of menstrual pain?

A. Not to the constant degree she did before. It is variable now.

(Testimony of Dr. John Robert Sullivan.)

Q. Does she complain of headaches? When did she last complain of headaches?

A. The patient said to me recently that the old headache which had been rather constant had gradually subsided and only occasionally does she have pain through the right parietal area of the scalp.

Q. When was the last complaint?

A. The latter part of last year so far as a severe headache is concerned. The most recent investigation was to the effect that she has had minor degree on occasions of headaches in relation to the trauma as I attribute it.

Q. In your examination of her,—Doctor, let me ask you, there are many kinds of headaches?

A. That is correct.

Q. A great many people complain of headaches?

A. That is correct.

Q. And it is a complaint probably where very few of us are confronted with any of these occurrences or any accidents?

A. That is correct. [59]

Q. Did she complain of headaches before the accident?

A. This girl had headaches at the time of the gall bladder and we termed it as a bilious headache, black spots before your eyes, that was controlled with the gall bladder control.

Q. Headache is subjective, is it not, Doctor?

A. That is correct. It is difficult to evaluate it. Evaluation is difficult unless there is a distinct

(Testimony of Dr. John Robert Sullivan.)

entity such as a blood clot or tumor or something.

Q. What is Meckles diverticulum?

A. Referring back to fetal life again that is a bowel connection through the uterine, the umbilical stock and the placenta; at birth immediately within the peritoneal cavity a portion of that stock drops off, in dropping off in most cases it is absorbed into the bowel structure but again occasionally it is not absorbed and it will give rise to the so-called left side appendicitis. It has all the structure of the normal bowel and can be of varying size from one inch to several inches in height.

Q. This operation on February 9 was for the removal of left-hand appendix?

A. The diagnosis of that condition was at the point of Meckles; there was no distinct Meckles entity of itself. It was a portion of the ilium distorted and above that the bowel was distended.

Q. What do you state was the cause of the obstruction? [60]

A. I cannot state. There were no adhesions at that point, no density at that point other than two lobes to the bowel producing obstruction, it might have been an old site of Meckles. I would not ascribe it to any entity other than to say it produced the obstruction and the patient later was relieved.

Q. Do you know whether or not the plaintiff had any hospital insurance?

A. Yes, she did.

Mr. Gearhart: I object to any evidence of any

(Testimony of Dr. John Robert Sullivan.)

insurance which the plaintiff may have had, it is incompetent, irrelevant and immaterial.

The Court: The objection is sustained.

Q. Doctor, have you been paid the amount you set forth in your bill, which is introduced as an exhibit? A. No, sir, I haven't.

Q. The amount you set forth for treatment at St. Mary's in the sum of \$200.00?

A. No, that amount is for treatment from March 5, to and including a date subsequent to the date of discharge, that was the sum of \$200.00.

Mr. Gearhart: May the answer of the Doctor as to insurance be stricken?

The Court: Yes, it may be stricken if he answered the question.

Q. March 5, 1946, to March 22, 1946, that charge is the sum of \$200.00?

A. That is correct. Also for the orthopedic work and other work necessary in connection with the pelvis, [61] right shoulder injury and right leg and right ankle injury.

Q. The treatment was directly in connection with the injuries?

A. Yes, sir, and I think it might be stressed, if I can just state in what connection and under what condition this first x-ray was taken, why I said she had an abnormal——

Mr. Collet: —I think the question has been fully answered and I ask that the entire answer so far given except "Yes, sir," be stricken.

The Court: It may be stricken.

Q. Medical management from March 23, 1946,

(Testimony of Dr. John Robert Sullivan.)

to and including December 31, 1946, you have set forth \$110.50? A. That is correct.

Q. That was examinations, physio-therapy and consultations? A. Yes, that is correct.

Q. How many times did you have the patient call on you, or how many times did you see the patient from March 22, 1946, to December 31, 1946?

A. I cannot say. I know she reported for physio-therapy treatments at intervals. Treatment is usually rendered three times a week depending on the type. Later in the year therapy was not as continuous as before. During the few months following her discharge from the hospital it was frequent, and it was then we had these consultations [62] with Doctor Spitalny; he saw this patient on account of her head injuries. That is simply in explanation of the charges made there.

Q. In the month of December how many times did she call at your office?

A. I haven't a daily record, I only have the time the patient was under treatment through that period of time to December 31, 1946.

Q. Were you treating her for thyroid difficulties during that period?

A. She has been continued on thyroid, the latter part of that has no connection with this, it has been billed to the California Physicians Service for services rendered.

Q. Between March 23 and December 31, 1946, how many times would you estimate that the plaintiff has consulted with you for examination or treatment?

A. May I ask, is that about this condition or about other conditions?

(Testimony of Dr. John Robert Sullivan.)

Q. For examination or treatment?

A. The patient has had routine check-ups including investigation of September, 1947, she has been examined for the purpose of reports which I have been requested to submit in this case. I would say for this specific matter I have seen the patient ten or twelve times.

Q. How many physio-therapy treatments in the month of [63] November of last year?

A. None whatever. In the terminal end of 1946 the physio-therapy was discontinued other than the wearing of the garment.

Q. During 1947 how many,—what per cent of the time that she consulted with you was with regard to other ailments that are not connected with this action?

A. A basal metabolism was taken in 1947 and reported to the California Physicians Service and the patient was advised as to medication in that regard. I saw her on two or three occasions for her sundry complaints in 1947 and advised her. I have seen the patient on many occasions.

Q. Is it necessary for the plaintiff to maintain a regular schedule with regard to the thyroid medication in order to avoid the congestion that you testified to?

A. She is classified as polyglandular; there is a deficiency in the thyroid secretion evidenced by the distribution of fatty layers and the distortion of her menstrual cycle and to a marked degree she has been helped by the thyroid medication; the increase in the size of the ovaries has

(Testimony of Dr. John Robert Sullivan.)

been decreased to normal and her menstrual cycle is also reduced to normal.

Q. As a result of the disposition of the congestion which you testified to the regulation of the intake of thyroid is not so strictly maintained—— [64]

A. No, we have established in her system an adequate thyroid reserve,—she takes thyroid yet. Under the law I must sign the prescription for those and I get them in amounts of a hundred tablets, which carries her through considerable time.

Q. And she takes the tablets herself?

A. That is correct. That is the ordinary use of thyroid medication.

Mr. Collett: No further questions.

* * * *

GLADYS SHAYLOR [67]

being recalled as a witness by the plaintiff, having heretofore been duly sworn, testifies as follows:

Direct Examination—(continued)

By Mr. Gearhart.

Q. You will recall the last question we asked you yesterday, what you did at that intersection and you stepped out on the cross-walk and couldn't remember after that?

A. That is correct, yes, sir.

Q. Where were you when you first became conscious?

A. I really didn't regain consciousness until the next day at the hospital. I came to but was kind of dazed at the Emergency hospital, that is all I remember of that.

(Testimony of Gladys Shaylor.)

Q. You became fully conscious in St. Mary's hospital the next day, at what time?

A. When I woke up in the morning.

Q. That is the first you really were conscious in the sense of knowing what was going on?

Mr. Collett: Objected to as leading.

Mr. Gearhart: I will withdraw the question.

The Court: Yes, I think she is perfectly able to answer questions without leading her.

Q. At St. Mary's hospital what treatment did you receive?

A. I was treated when I went in but I don't know what it was.

Q. After you became conscious? [68]

A. I received therapy treatments and had medicine to take.

Q. Can you describe the pain you suffered?

A. The pain I suffered was all over from head to toe.

Q. Did your head ache? A. Yes, sir.

Q. How long were you in St. Mary's hospital?

A. Sixteen days.

Q. From March 5, to March 22

A. Yes, sir.

Q. Were you able to walk out of St. Mary's hospital?

A. I was taken down on a wheel chair and helped into the machine.

Q. What did you do when you arrived at your home? A. I was confined to my bed.

Q. How many days?

(Testimony of Gladys Shaylor.)

A. Until the Doctor gave word to come and see him.

Q. Do you remember the time of that?

A. Well, about two weeks I was confined to bed before I went to see the doctor.

Q. Did the doctor prescribe or did you receive any special appliance to wear before you left the hospital?

A. I was fitted for a Kamp surgical belt. I was fitted for that before I left the hospital and when I got up I had to put that on; if I didn't I got a severe pain and had a severe pain until I did put it on.

Q. How long have you been wearing that, or how long did you wear it? [69]

A. Continuously since.

Q. Have you attempted to go without it, say, in the mornings?

A. Yes, I have gone a few mornings without it.

Q. Has that been lately?

A. Yes, recently on Saturday when I get up and am not going anywhere sometimes I don't put it on and then I start getting pain and have to go and put it on.

Q. When was the last time you tried that?

A. Last Saturday.

Q. Will you tell the Court whether you have any pain and suffering at this time?

A. Yes, sir. I do have pain down in the pelvis yet.

Q. Anywhere else? A. No other pains.

Q. Any headaches at the present time?

(Testimony of Gladys Shaylor.)

A. No, not like I used to have, just regular headaches at present, not like it was after the accident.

Q. Do you have any headaches at the present time?

Mr. Collett: I think she answered the question, I object to this as repetition.

The Court: I think it is better to let the witness testify, counsel knows that.

Q. Miss Shaylor, in your amended complaint it is alleged that Doctor Spitalny made a pelvic examination and the charge was \$25.00.

A. Yes, sir. [70]

Q. Did you go and see him?

A. Yes, sir, at the request of my doctor I went to Doctor Spitalny.

Q. I show you a bill on the billhead of Doctor Spitalny.

A. Yes, sir, that is the bill I paid to Doctor Spitalny.

Mr. Gearhart: I offer it in evidence.

The Court: It may be admitted.

Q. In your amended complaint you allege that your expenses, special damages you list Doctor Lusignan in there?

A. Yes, sir, that is for \$20.00. He is a specialist I was recommended to. Doctor Sullivan recommended him; after I came home from the hospital I went to him.

Q. You received a bill from him?

A. Yes, sir, I received a bill from Dr. Lusignan which I paid.

Q. You allege special damages as charge for ambulance \$7.00?

(Testimony of Gladys Shaylor.)

A. Yes, sir, from the Emergency to St. Mary's hospital.

Q. And an item of dress and suit cleaned?

A. Yes, sir, \$2.00 for dressed cleaned.

Q. For stockings torn?

A. Yes, sir, \$1.25 for stockings.

Q. And days off work \$187.38?

A. Yes, I was off work. I had so many days, I figured it amounted to \$187.38.

Q. And medicine to date \$20.00.

A. That is correct \$20.00 to date. [71]

Cross Examination

By Mr. Collett.

Q. By whom are you employed?

A. The Internal Revenue, 100 McAllister.

Q. That is an agency of the United States?

A. Yes, sir.

Q. How long have you been employed there?

A. It is three years now.

Q. As of today?

A. Yes, sir, three years, not to the exact date and month, but it is three years in 1948 that I have been employed by them.

Q. Now, after your injury on March 5, when did you return to work?

A. April 22, 1946.

Q. April 22?

A. Yes, sir, it was six weeks after the accident. I was out of work for six weeks.

Q. During that time did you receive your regular pay from the United States by virtue of your employment?

(Testimony of Gladys Shaylor.)

A. Yes, sir, I received the regular pay check.

Q. How much did you receive per week?

A. It was,—let's see, since then I have gotten a grade increase, it was sixty-four something.

Q. About sixty-four dollars?

A. At that time but now it is different. [72]

Q. You received your check every week?

A. Every two weeks, the second and fourth Wednesdays.

Q. But you received your check regularly?

A. Yes.

Q. You received it regularly for the period you were off work?

A. Yes, sir.

Q. What was the leave grade?

A. What do you mean?

Q. You have regular leave?

A. Yes, we have sick leave and annual leave that we are entitled to, so many days a month. I had twenty-eight days sick leave coming. [73]

* * * *

Q. Do you have any accident insurance?

Mr. Gearhart: I object to that as incompetent irrelevant and immaterial. Any source of insurance is immaterial and incompetent here.

The Court: I think the same rule applies here that would apply against an individual case where the Government was not a party. I am of the opinion that insurance does not enter into this matter. I agree with counsel however, that there is good argument on both sides. I understand that some Courts have held it is proper and some Courts have

(Testimony of Gladys Shaylor.)

held it is not. I think at this time I will sustain the objection as to insurance. [80]

* * *

Q. The item that you have in your Exhibit number 7, or that you have in your complaint for medicine to date, is that for medicine as far as this particular cause is concerned or does that include ailments, any other ailments?

A. It is medicine that he prescribed for me. Doctor Sullivan mentioned medicine that I have been taking, that is what they are.

Q. You have been taking medicine for other ailments? A. Yes, sir.

Q. What medicine are you taking now pertaining to this injury of March 5, 1946?

A. Pills that Doctor Sullivan gave me.

Q. Are they thyroid pills?

A. Yes, thyroid pills.

Q. That is all the medicine you are taking is it?

A. Yes, sir.

Q. When did you last have a headache?

A. Just regular headaches off and on. I don't have them like I had when I got in the accident.

Q. What effort do you make as to the pain in the pelvic area to accomplish rehabilitation of that other than the truss, or for the relief of it?

A. I don't understand what he means.

Q. What are you doing by way of rehabilitation with regard to the pain you have in the pelvic area.

A. Just rest and taking it easy. [84]

Q. You have no exercise that you engage in?

A. Not especially.

(Testimony of Gladys Shaylor.)

Q. Where is the pain?

A. Right down here in front of the pelvis.

Q. In the abdominal area?

A. Now, it is lower than that, lower down.

Q. Is it always there? A. Yes, sir.

Q. Is it there now?

A. Yes, sir, slightly, not as bad as it was.

Q. What kind of pain is it?

A. A soreness there, if it is touched it is painful and sore.

Q. Is it more severe or less severe during menstrual periods?

A. Usually after menstrual period.

Q. After menstrual period you feel it?

A. Yes, sir.

Q. Then after menstrual period does it subside?

A. Yes, it does.

The Court: We will recess at this time for fifteen minutes.

11:10 a. m., April 13, 1948

Q. Doctor Sullivan testified that he treated you in June 1945 for an injury to the buttocks, will you tell the Court the circumstances of the injury?

A. I fell down stairs and got a soreness in the buttocks and Doctor Sullivan treated me for it.

Q. How did you fall down stairs?

A. Lost my footing.

Q. The injury was to the buttocks alone?

A. That's correct.

Q. Did you have any pain after the injury?

A. Not to my knowledge.

(Testimony of Gladys Shaylor.)

Q. Now, Doctor Sullivan testified that in March or prior to March 5, 1946 that he had instituted treatment with regard to your gall bladder, and enlargement of the ovaries and he put you on a thyroid treatment in which you took thyroid tablets. What was the symptoms that you experienced that led you to go to the Doctor?

A. Severe pains in my side. I had pains all of the time, that is what led me to Doctor Sullivan.

Q. As a result of those pains what happened?

A. Doctor Sullivan treated me. He gave me thyroid pills.

Q. Were those pains present at the time the appendix was removed? You recall the operation for the removal of the appendix?

A. Yes, that is in 1943.

Q. Which is prior to 1946? A. Yes, sir.

Q. The pain you experienced at that time was what? A. From the appendix you mean?

Q. Yes.

A. Severe pain on the right side. [86]

Q. After the removal of the appendix in 1943 you still had pain? A. Yes, sir.

Q. Where was it then?

A. On the left side.

Q. In regard to the menstrual period did you always experience a good deal of difficulty at that time? A. Yes, sir.

Q. With regard to pain? A. Yes, sir.

Q. Have you been troubled and have you experienced such pain ever since you reached puberty?

A. Yes, sir.

(Testimony of Gladys Shaylor.)

Q. That exists at this time?

A. It wasn't as bad in the beginning as what it is now. I still get pain once in a while.

Q. That occurs after your period?

A. Yes, sir, after. [87]

* * *

Redirect Examination

By Mr. Gearhart:

Q. In my examination with reference to special damages I overlooked asking you to tell about the hospital bill. Did you receive and pay the hospital bill for your treatment from March 2 to March 22?

A. The hospital bill I gave you.

Q. What was the amount of it?

A. \$211.85.

Q. That covered all the treatment at this hospital during the period? A. That's right.

Q. In regard to the sick leave which the Court asked about; this \$187.38, the item of twenty-eight days off work, let me ask you this question: Suppose you use all your sick leave and annual leave and become sick, would you lose any wages?

Mr. Collett: Objected to as argumentative, the facts are before the Court and it is a matter for the Court to determine. This is a payment by the United States Government and it covers sickness on behalf of its employees. There is nothing that this witness can testify to as to the application of that payment.

The Court: It would be entirely speculative however I think she may answer. [89]

(Testimony of Gladys Shaylor.)

A. We are entitled to so many days sick leave and so many annual leave. When the sick leave is used they go to the annual and when the annual leave is used then we go without any pay.

The Court: I understand your entire Doctor bill was \$250.50, for this period to December 31, 1947. That is the entire Doctor bill?

A. That is correct.

Q. Miss Shaylor, I show you plaintiff's exhibit 7 and I would like to have you examine that. Did Doctor Sullivan treat you at the various times specified in the bill? A. Yes, sir.

Q. In St. Mary's Hospital? A. Yes, sir.

Q. And afterward?

A. Yes sir, I didn't understand that question, I didn't know the Doctor's testimony was for that.

The Court: I was not referring to the Doctor's testimony but to your testimony, you testified that the Doctor's bill was \$250.50.

Q. Miss Shaylor, have you paid the Doctor any money? [90] A. Not to my knowledge.

Q. This represents an accurate statement as to the treatments, the times and places by Doctor Sullivan? A. Yes, sir.

Mr. Collett: I object to this as incompetent, irrelevant and immaterial this has been gone into and the witness has testified to all this. This document is hearsay as far as this witness is concerned.

The Court: You don't know anything about that bill, personally, do you? A. No, I don't.

WALTER A. SHAYLOR

Being called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Gearhart:

Q. You are the Father of Gladys Shaylor?

A. Yes, sir.

Q. And you are one of the plaintiffs in this action? You are the Walter A. Shaylor who filed this as guardian ad litem? A. Yes, sir.

Q. Could you tell the age of the plaintiff?

A. Twenty-one years old now.

Q. Do you know her birth date?

A. July 31, 1926.

Q. In the amended complaint it is alleged that the plaintiffs were compelled to secure the services of physicians, roentgenologists, hospitals, ambulances and other appliances, and one of the items is a bill of St. Mary's hospital for [92] \$211.85?

A. That has been paid by me.

Q. That is a correct item?

A. So far as I know.

Q. With reference to the Doctor John R. Sullivan bill for \$600.50?

A. He has not been paid.

Q. I show you plaintiff's exhibit 7. Read that very carefully. Does that represent a statement of facts as to the treatment received by your daughter?

Mr. Collett: Objected to, it would be hearsay as to this witness, and it is incompetent, irrelevant and immaterial.

(Testimony of Walter A. Shaylor.)

The Court: Unless he knows and I don't see how he could know.

A. I can only answer that she received a lot of treatment and that I don't know what they were.

Q. He was the Doctor that treated your daughter? A. Yes, sir, Doctor Sullivan.

Q. The party named in that bill?

A. Yes, sir.

Q. And you know that he did treat your daughter?

Mr. Collett: I object to this line of examination——

The Court: I do think that we should allow the witness to testify and not have counsel testify. [93]

Q. Do you know whether the Doctor was at the Emergency hospital when your daughter was there?

The Court: There isn't any question about that.

Q. You allege in your complaint a bill of Doctor August Spitalny pelvic examination \$25.00. I show you exhibit 8 and ask you if you ever saw that before? A. I did.

Q. Has that been paid?

A. That has been paid.

Q. Who paid it? A. I did.

Q. You allege a bill of Doctor Frank W. Lusignan \$20.00? A. Yes, sir. That has been paid.

Q. You know that your daughter went to this Doctor? A. Yes, sir.

Q. Who paid that?

A. I think my wife paid that.

Q. Ambulance to St. Mary's hospital?

A. That bill was paid by my wife.

(Testimony of Walter A. Shaylor.)

Q. Medicine to date \$20.00.

A. We paid that, I can't recall the details.

Cross-Examination

By Mr. Collett:

Q. Mr. Shaylor, I understand that you paid the hospital bill? A. Yes, sir.

Q. You paid the \$25.00 to Doctor Spitalny?

A. Yes, sir.

Q. And the bill to Doctor Lusignan, your wife paid? A. Yes, sir.

Q. The ambulance bill, your wife paid?

A. Yes, sir.

Q. Did you pay for the cleaning of the dress and suit? A. I did.

Q. And the torn stockings? A. Yes, sir.

Q. And the medicine?

A. I don't recall the medicine.

Q. The medicine was bought over a period of time? A. Yes, it was.

Q. Did you pay for any of it? A. Yes, sir.

Q. What proportion? A. I don't recall.

Q. It was either paid by you or your wife?

A. Yes, that is right.

Q. And the bills of Doctor Sullivan, did you pay them? A. I haven't paid it.

Q. Has it been paid? A. No, sir.

Q. Do you still owe it?

A. So far as I recall I do.

Q. Did you pay anything on account?

A. No, I haven't.

Q. From March 5, 1946 to the present time?

(Testimony of Walter A. Shaylor.)

A. I paid for her bowel operation.

Q. With relation to the bill for the period of March 5, to December 31, 1946, \$110.50?

A. No, I haven't paid it.

Q. Are you going to pay it?

A. I guess I will have to pay it.

Q. You expect to pay that yourself? A. I do.

Q. Is that your obligation?

A. She is my daughter and I am going to pay the bill for her.

Q. Are you going to receive any contribution from any source?

Mr. Gearhart: I object to that if it refers to any insurance.

The Court: He may answer. [96]

Q. Is your daughter going to help you pay that?

A. Naturally.

Q. Why hasn't the money been paid during all this time?

A. It has just been neglected I guess.

Q. Have you received a bill?

A. Yes, sir, I have.

Q. When did you receive a bill?

A. I don't recall.

Q. Was it a month ago? A. I don't recall.

Q. Was it six months ago?

A. I don't recall.

Q. Did you just receive one bill?

A. I don't recall that either.

Q. As a matter of fact the bill has been paid?

A. No, sir, it has not.

Q. And is the same true for the period of Janu-

(Testimony of Walter A. Shaylor.)

ary 1, 1947 to December 31, 1947, \$140.00 is there anything paid on account of that bill?

A. I don't recall.

Q. Did you pay anything on account of it?

A. Not on account of the accident I haven't paid anything.

Q. You haven't paid anything?

A. No, sir.

Q. Did the bill of \$140, from January 1947 to December 31, 1947 include anything other than the accident? [97]

A. That, I don't know.

Q. Did you ever receive a Statement from Doctor Sullivan?

A. Yes, sir.

Q. Have you it with you?

A. No, sir.

Q. What did it state?

A. I don't recall.

Q. Does your attorney have the bill?

A. He may have the bill.

Q. Have you the bill?

Mr. Gearhart: In December there was an attempted compromise of this and at that——

The Court: —Counsel knows that is not proper, let's proceed with the evidence.

Q. Do you intend to pay the \$140.00?

A. I do.

Q. Are you going to receive any contribution from your daughter?

A. I expect to.

Q. How much are you going to pay?

A. I will have to pay it all.

Q. It is your obligation to pay it?

A. Yes, sir.

(Testimony of Walter A. Shaylor.)

Mr. Collett: That is all.

Mr. Gearhart: That's all. [98]

CATHERINE A. SHAYLOR

Called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Gearhart:

Q. Is your daughter Gladys Shaylor, the plaintiff in this action? A. Yes, she is.

Q. Can you tell the Court the date of her birth?

Mr. Collett: If there is anything that counsel has in mind that we can stipulate to we will save time here.

Mr. Gearhart: The date of her birth.

The Court: That is in evidence.

Q. Mrs. Shaylor, do you recall March 5, 1946?

A. Yes, sir.

Q. The date of the accident? A. Yes, sir.

Q. Tell the Court where you first saw your daughter after this accident?

A. At the emergency hospital.

Mr. Collett: The plaintiff has testified to this matter and the Doctor has testified to it, it seems to me that is in evidence.

The Court: There isn't any question but what she was taken to the emergency Hospital and received treatment.

Mr. Collett: No question at all about that.

The Court: Then you may examine as to other matters.

(Testimony of Catherine A. Shaylor.)

Q. After your daughter was removed from St. Mary's Hospital to your home were you with her?

A. Yes, sir.

Q. Do you recall how she was brought home?

A. In a wheel chair to the machine and from the machine to my home, my husband packed her up stairs.

Q. Was she confined to bed any of that time?

A. Yes, sir.

Q. Can you recall approximately how long?

A. One week and a half.

Q. Can you describe her condition so far as pain and suffering is concerned?

Mr. Collett: I object to this as hearsay.

The Court: She may answer just as to what she observed.

Q. State what you observed?

Mr. Collett: I think he should lay a foundation when she observed any condition, the time and place.

Q. After your daughter was brought home on March 22, 1946 tell the Court what you observed as to the condition of your daughter? [100]

Mr. Collett: That is too indefinite.

Mr. Gearhart: I had not finished the question.

Q. State what you observed as to the condition of your daughter as to pain and suffering.

A. She was nervous and melancholy.

Q. Did she have pains?

A. Yes, sir, she had terrible pain.

Mr. Collett: Objected to as hearsay.

(Testimony of Catherine A. Shaylor.)

The Court: She can tell only what she observed.

Q. You say she was melancholy?

A. Yes, sir.

Q. What do you observe up to the present time?

A. She is nervous.

Q. At the present time?

A. Yes, sir, still melancholy and nervous.

Q. Mrs. Shaylor, in the special damages here, there is an item of ambulance to St. Mary's Hospital did you pay that? A. I did.

Q. And injuries to clothes and stockings?

A. Yes, sir.

Q. Who paid that?

Mr. Collett: We are not questioning the payment of those items.

The Court: I guess I will just let you go ahead and same time, you just go ahead and put it in again.

Q. There is alleged an item of medicine \$20.00?

A. Yes, sir.

Q. Did you pay for that? A. Yes, sir.

* * * *

The Court: During the noon recess I have gone over some decisions of the Ninth Circuit Court of Appeals and I will permit you to recall, or to call any witness you wish as to the amount of insurance they have received. I will accept this testimony subject to objection.

Mr. Gearhart: Subject to the objection I have made.

The Court: Yes, and the Court will determine whether it is admissible later. [104]

* * * *

GLADYS SHAYLOR

Recalled for further cross-examination.

Cross-Examination

By Mr. Collett:

Q. Miss Shaylor, on March 5, 1946 what insurance did you hold at that time?

A. I belonged to the California Physicians Service. [108]

Q. What kind of service is that?

A. Hospital service in a group from the Internal Revenue. I pay Four dollars a month into it.

Q. What does that entitle you to by the way of benefits?

A. X-ray examination,—I have my card here may I refer to it?

Q. Yes, you may.

A. Well, it has medical and surgical care for ninety days you are entitled to home, office, and hospital visits, surgical operations, x-ray and radium treatments and x-ray examinations, laboratory tests, and specialists, consultants and anesthetics. You pay for the first two visits. If laboratory tests, or operations are necessary on the first two visits the fund pays for that. There is a waiting period of ten months for maternity care. Benefits are not available to dependants and all existing conditions are covered and you have your choice of Doctors. Hospital care and meals and service of a dietician; general nursing care; use of emergency room for accident cases and routine casts and splints; routine

(Testimony of Gladys Shaylor.)

dressings and medicine and choice of licensed hospitals.

Q. How much of the hospital bill was paid by the California Physician's Service?

A. I think \$152.00.

Q. How much of the bill rendered by Doctor Sullivan from March 5, 1946 to December 31, 1946 in the sum of \$110.50 [109] was paid by the California Physicians Service?

A. I really don't know, I don't remember.

Q. Was some of it paid?

A. Do you mean this \$110.00?

Q. The California Physicians Service pay part of the Doctors bills, will you look at that and tell us that again, or read that portion again?

A. You pay for the first two visits in each ailment. If laboratory tests, x-ray examinations or surgical operations are necessary during the first or second visit their cost will be paid for by the fund.

Q. Your visits after the first two visits are paid for?

A. They pay for them, yes.

Q. How much was paid after the first visit,—you had more than two visits?

A. Yes, I had more than two visits.

Q. Who paid for them?

A. The California Physicians Service I guess; I don't know, wasn't that in the medical report that was given.

Q. You don't know whether they were paid for or not. So far as you know there is no obligation so far as you are concerned?

(Testimony of Gladys Shaylor.)

A. I don't know.

Q. Now, how about the bill from January 1, 1947 to December [110] 31, 1947, of the sum of \$140.00.

A. I don't know what bills were paid. My Dad took care of all the bills, I don't know what bills were paid or not.

Q. Under this service you were entitled to the assistance of the California Physicians Service?

A. Yes, sir, they take care of the visits after the first two visits. I don't know how they pay or when they pay it.

Mr. Collett: I don't want to take up time with this Your Honor, but I know of no other way to bring it out. I don't think this matter should be obscured——

Mr. Gearhart: —As I said at the beginning of this trial if the Court finds for the plaintiff then I think the plaintiff would be entitled to the money she was out for hospitalization and Doctors bills.

The Court: That is true, but right now I don't see any way to determine that from the record, they were testified to at one time as some \$250.00. It seems to me that this exhibit showing the amounts does not amount to anything now. There is nothing to show that there is anything she is obligated for.

Mr. Gearhart: The Doctor testified as to that amount.

The Court: She has just testified that he rendered bills for \$140.00 and \$110.50. If this fund

(Testimony of Gladys Shaylor.)

paid this amount, or if it is paid by this group insurance, then, under the late decisions, I am under the [111] impression now that I am not going to put the Government in the position of paying the bills twice. It is the plaintiff's duty to put in the case to establish these matters. It seems to me that this plaintiff destroys all the evidence now in regard to the bills.

* * * *

DR. CARRUTH WAGNER

Called by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Collett:

Q. You are in the Public Health service,—the United States Public Health Service?

A. Yes, sir.

Q. Any particular field or branch?

A. Orthopedic service, United States Marine Hospital.

Q. Are you regularly admitted to practice as a physician?

A. In the State of Nebraska and this State.

Q. Do you specialize? A. Yes, sir.

Q. What is your specialty?

A. Orthopedics.

Q. Your rank is Lieutenant Commander, Coast Guard?

A. With the United States Public Health Service, not in the Coast Guard per se.

Q. Were you similarly employed on the 12 of December 1947, Doctor? A. Yes, sir.

(Testimony of Dr. Carruth Wagner.)

Q. Doctor, were you requested to make a physical examination of the plaintiff in this case?

A. Yes, sir.

Q. Did you make such examination?

A. Yes, sir. [118]

Q. Did you take x-rays? A. Yes, sir.

Q. Did you bring with you the x-ray and reports? A. Yes, sir.

Q. These are the x-rays and report from the Marine Hospital that you brought with you this morning?

A. Yes,—if I may check the x-rays again to make sure they are of this case? Yes, they are.

Q. How long have you been practicing medicine?

A. In the service since 1941.

Q. When were you admitted to practice?

A. July 1941.

Q. How long have you been specializing?

A. Since 1946.

Q. State to the Court the examination made by you on or about December 12.

A. I think we made the examination December 6.

Q. December 6? A. Yes, sir.

Q. Who was present at the examination?

A. At the oral examination the patient and the attorney for the plaintiff here?

Q. Mr. Gearhart? A. Yes, sir.

Q. He was present during the entire examination? A. The oral examination. [119]

Q. Tell the Court the examination made by you, the findings made by you, and you may use the x-ray.

(Testimony of Dr. Carruth Wagner.)

A. Is that permissible?

The Court: Whatever your counsel wants.

A. Well, upon request of Admiral Scammell the patient appeared on the 6th of December at which time she said she was injured March 5, when struck by a Coast Guard truck at about five p. m. in San Francisco, at Van Ness and McAllister streets. She said she was rendered unconscious and taken to the Emergency Hospital and moved to the St. Mary's hospital and placed under the care of Doctor J. R. Sullivan. She remained there for 16 days. She regained consciousness late that night she stated, and remained in bed for 16 days in the hospital. Her complaint was severe headaches, no dizziness or visual difficulty. Since leaving the hospital she has recurrent headaches that come on in the morning and wear off during the day, and are relieved by anacin; no emotional instability or loss of ideational content. She complained of pain, which she attributed to the accident, pain in the pelvis or the region of the pelvis that comes on regularly the day following her menstrual period requiring her to go to bed. She said there was no urinary difficulty; her period and flow were unchanged after the accident as compared to prior to the accident. She also stated that her right hand and ankle were injured at the time of the accident but that she was recovered from that, and had no disability because of this accident. [120]

Q. Did she advise you that she had gall bladder trouble prior to the accident, and that she had an

(Testimony of Dr. Carruth Wagner.)

appendectomy in 1943 and was under treatment for a thyroid condition by Doctor Sullivan?

A. No, sir.

Q. Continue and state the result of your examination?

A. Well, the examination was essentially negative, except that she was obese, had dependent abdomen, she was more obese than would be normal for her age and height, that is about all the examination except the x-ray.

Q. What x-ray?

A. Of the skull, pelvis and spine.

Q. The external examination is what you have testified about now Doctor? A. Yes, sir.

Q. And the result of the external examination was what? A. Negative.

Q. Now, will you explain the findings as a result of the x-rays taken at that time.

A. The skull x-rays were entirely negative and show no abnormality whatever. This is a lateral of the skull, no fracture of either table; the basal region and attachment to the spinal column is normal. It is necessary to take two laterals to show fracture line if there is one. This is a posterior-anterior,—front to the back and shows [121] no abnormality in that. This is one with the head tipped back to show the basal region and shows no abnormality.

Q. I show you exhibits A to I,— A, B, C, D, E, F, G, H, I.—Strike that Mr, Reporter.

Mr. Collett: I offer those exhibits in evidence and ask that they be admitted.

(Testimony of Dr. Carruth Wagner.)

Mr. Gearhart: No objection.

The Court: They may be admitted.

Q. Now, Doctor, the x-rays you have in your hand, explain them?

A. This is a set of three, they are of the spine Anterior-Posterior view through the body showing the spine from approximately the 8th dorsal to the sacrum and shows no abnormalities; this is a lateral view showing a normal condition; the next is an oblique and shows no abnormalities. The last picture is of the pelvis; this is the right and left side showing the relationship of the wings to the sacrum and to the symphysis pubis and in my opinion shows no abnormality.

Q. Did you closely examine the region of the symphysis pubis?

A. Yes, sir, because she gave a history of possible injury to that region so we paid particular attention to that. On this x-ray there is no indication of old or recent fracture; the relationship between the two is within limits, there is some reactive perostitis?

Q. Will you explain reactive perostitis? [122]

A. These bones are covered by periosteum, it is a membrane that limits the growth of the bone. When something effects the periosteum a roughening occurs and new bone grows and she shows some haziness suggestive of some lesion at some time in her past life which has disturbed the periosteum. This is insignificant.

Q. What could cause this reaction?

(Testimony of Dr. Carruth Wagner.)

A. There are many things, trauma, some sort of trauma, trauma to the musculature which is attached to this bone, bone infection and certain metabolic diseases.

Q. Doctor, what do you class in the category of metabolic diseases?

A. Certain deficiencies, parathyroid disease, ovarian diseases will occasionally manifest in perosteum disease.

Q. As a result of your examination of the plaintiff and the examination of this x-ray picture,—your examination of December 6 and the examination of this x-ray what would you say is the condition of the plaintiff as disclosed with regard to the symphysis pubis?

Mr. Gearhart: We object to that as there is no foundation laid for the question?

The Court: He may answer.

A. From an overall picture, this patient at the time of this examination on the basis of the film and the physical examination showed two positive things, she shows evidence of some metabolic disturbance that causes these [123] upsets, it is not normal within limits for a girl of her age; second, that she had some disturbance within the pelvis that would give her this pain in menstruation that is not associated with the pelvis. It is unlikely that it would be orthopedic, but a condition that we can attribute to her uterus or ovaries or a relationship between the two.

Q. Did you receive an x-ray from the attorney

(Testimony of Dr. Carruth Wagner.)

for the plaintiff and a report made by Doctor Sullivan?

A. I think I did see them, but I don't recall them now. Did I make a report on them? Yes, I remember them, I see on my report that they were examined, we examined the x-ray films submitted by the attorney.

Q. Doctor, I show you plaintiff's exhibit 2B, an x-ray taken on the 6th of March 1946 and ask you if those were submitted to you at the time you just mentioned?

A. Yes, sir, I think so. I cannot state definitely because I haven't any record for identifying these films. Certain x-ray films were submitted by the attorney. I see no further identification.

Q. I will ask you at this time to look at Plaintiff's exhibit 2A and 2B?

A. I have two here showing the pelvis, one identified by the hospital number dated the 6th of March 1946 and the other is of the pelvis also identified as taken the same day of Miss Shaylor. [124]

Q. Calling your attention to the area of the symphysis pubis would you describe to the court your analysis of that?

A. I see no evidence of injury, she shows some disproportion because of the size of the ridge here (indicating) between the left and right and some irregularity that is present on the latter film, but no indication of fracture or separation of the symphysis pubis; no disproportion here (indicating). Since that disproportion takes place in fracture

(Testimony of Dr. Carruth Wagner.)

rather than separation on the symphysis I would not say these show any trauma to the bone?

A. Could there be a condition of traumatic injury in that area without exhibiting itself in the x-ray?

A. Yes, sir, injury to the soft tissue; very definitely. The x-ray only shows the condition of the bone itself. The bone is within normal limits. The relation of the two ridges are within normal limits for a woman of her age.

Q. Does it show a separation? A. No, sir.

Q. Would it be your opinion that whatever injury the plaintiff may have suffered on March 5, 1946, as a result of your examination that she is completely recovered?

A. I would say that she had recovered from any injury she received to her pelvis, skull or spine.

Q. The plaintiff has testified that she wears a Kamp, which as I understand, is to support the pelvic area. Are you familiar with such a device?

A. Yes, sir.

Q. What would be the effect of such device as far as her particular condition, as far as the area of the symphysis pubis is concerned?

A. I would like to qualify my answer by saying that I don't know why Doctor Sullivan prescribed it for her, what he had in mind nor what her complaints were that necessitated it. There are various types of Kamp garments; from her explanation I would assume that the garment was prescribed as an additional abdominal support. To take the weight

(Testimony of Dr. Carruth Wagner.)

off the spine. It is the kind we prescribe for a person with relaxed abdomen. It is to relieve the pain of the weight on the spine. As far as the pelvis is concerned I don't know that Kamp would help that. At each step the weight is transferred from one leg to the other leg and it is almost impossible to adequately support the pelvis during the weight shifting or throwing if there is any disconnection in the pelvis.

Q. If you knew a patient that had been operated for appendicitis, had an appendectomy; that had also had some disability and involvement of the gall bladder; some metabolic disability involving the thyroid; had subsequently been operated for Meckles diverticulum; who was obese [126] would you say that the necessity to wear such a truss was related to those conditions and the weakening of the abdominal wall as a result of those operations and the conditions involved?

A. Certainly it would have no value to the gall bladder; no support would be of any value there, or hyperthyroid or other metabolic disturbance. It would be of value if she had a backache, and second, if she developed a hernia it may be of benefit to support the area relaxed in operation, or a hernia; it is much to the benefit of the patient to have the hernia repaired. For the condition per se it would be of no value.

Mr. Collett: You may cross-examine.

* * * *

WALTER A. SHAYLOR

Recalled for further cross-examination, having heretofore been sworn, testifies as follows:

Cross-Examination

By Mr. Collett:

Q. Mr. Shaylor, you understand you are under oath? A. Yes.

Q. And supposed to tell the truth?

A. Yes.

Q. You have previously testified that you paid the hospital bill to St. Mary's Hospital of \$211.75, and it develops that you paid the difference between \$152.00 and \$211.75. Now, did you pay Doctor August Spitalny \$25.00? A. I did.

Q. Did you pay Doctor Frank W. Lusignan \$20.00?

A. No, but I was under the impression that it had been paid.

Q. Has the bill been paid?

A. I heard what was said in Court.

Q. Has the bill been paid?

A. I believe it has.

Q. By whom?

A. I don't know, I cannot answer that. [181]

Q. Did your daughter pay that?

A. I don't know.

Q. Did the California Physicians Service pay that? A. I heard you say that.

Q. The ambulance service to the hospital did you pay that? A. My wife paid that.

Q. And the medicine?

A. We paid for lots of medicine.

(Testimony of Walter A. Shaylor.)

Q. You set forth in amendments to paragraphs two, seven and nine of your complaint that you paid \$20.00 for medicine?

A. I paid so many medicine bills I don't recall what you are talking about.

Q. You have made the allegation in your complaint? A. Yes.

Q. Did you read it? A. Yes, sir.

Q. Did you know the contents of it?

A. I cannot recall it at this time.

Q. This was sworn to on the 3rd of April 1948, was it not? A. It must be, but I can't recall it.

Q. In the case of Doctor Lusignan, you didn't pay it but the bill was paid?

A. I was under the impression that it was paid.

Q. When did you get under that impression?

A. When I paid all of the bills. [182]

* * * *

The Court: I am satisfied in this case that this plaintiff has not lost anything financially through the loss of work. There is no evidence to show [184] that she needed her sick leave for any other purpose which caused her any loss. I am satisfied that there has been testimony submitted here that should not be considered by the Court. Some of the witnesses have been rather evasive. I think some of them knew some facts that they could have testified to if they had wanted to. I don't believe people are paying out over \$100.00 in amounts and then not knowing whether they paid it or not. I also do not think there is any permanent injury to this

plaintiff because of this accident. In the present day of medical science with the things they are doing and what they are able to accomplish in regard to accidents of this kind. I also think the pain and suffering was rather slight. The question of negligence is very close. Of course, when an accident of this kind occurs the presumption is that the plaintiff was obeying the law; it also seems in a great many of these cases the party loses consciousness even before they are hit. I think the testimony here was that she didn't remember anything after stepping down from the curb. However, I am going to hold that there is negligence and that the plaintiff is entitled to recover and further I will not allow her any money for the loss of time, she was paid during all of the time she was away from her work. I am going to allow her \$500.00 general damages and as to the question of special damages, that is difficult [185] for the Court under the testimony in this case. After going over the evidence and giving the plaintiff the benefit of some allowances where it is rather questionable, I will fix the special damages at \$460.25.

There is one matter bothering me some; I haven't taken into account nor considered the amount shown by the evidence at one place to be paid by the Insurance Company; perhaps I should determine that, but in the latter part of the case the Government felt that it was immaterial and made objection which was sustained so I didn't make any determination of that matter. I know of no way that it

could be provided in a judgment that a release be given by the Insurance Company, however, if the District Attorney has any idea on that it can be submitted at the time of the submission of findings and conclusions and judgment. The judgment of the Court is that she recover as I have stated, \$500.00 general damages and \$460.25 special damages. The Court will adjourn at this time until 10 in the morning.

State of Idaho,

County of Ada—ss.

I, G. C. Vaughan, hereby certify that I am the official Court Reporter for the United States District Court, District of Idaho; I further certify that I am the Court Reporter who reported in shorthand the testimony adduced and the proceedings had in and about the trial of the within entitled cause and that thereafter I prepared a transcript of the same.

I further certify that the foregoing transcript is a true and correct transcript of the testimony given and proceedings had in and about the said trial.

In witness whereof I have hereunto set my hand this 29th day of November 1948.

/s/ G. C. VAUGHAN.

[Endorsed]: Filed December 10, 1948.

[Endorsed]: No. 12152. United States Court of Appeals for the Ninth Circuit. Walter A. Shaylor, and Gladys Shaylor, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 13, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12152

WALTER A. SHAYLOR, et al

Plaintiffs and Appellants,
vs.

UNITED STATES OF AMERICA, a sovereign
Government,

Appellee.

STATEMENT OF POINTS ON APPEAL

The appellants hereby adopt as their points on appeal the statement of points appearing in the transcript of the record on appeal herein.

Dated: January 13, 1949.

MELVIN M. BELLI.

/s/ WILLIAM E. GEARHART,
Attorneys for Appellants.

Receipt of a copy of the within statement of points on appeal, on Jan. 13, 1949, is hereby admitted.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

[Endorsed]: Filed January 13, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

MINUTE ORDER FOR CONSIDERATION OF
APPELLANTS EXHIBITS

Upon the application of appellants and it appearing that the appellants' exhibits are principally x-rays and hospital records; and

Good cause appearing therefor:

It is hereby ordered that the original exhibits of appellants attached to the record on appeal herein, be considered by this Court without the necessity of their reproduction in the printed record designated by the appellants.

Dated: Jan. 17, 1949.

/s/ WILLIAM DENMAN,

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

United States Circuit Judges.

[Endorsed]: Filed Jan. 17, 1949. Paul P. O'Brien, Clerk.